UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

AT&T SERVICES, INC. **Respondent** **and** **VERONICA ROLADER, AN INDIVIDUAL** **Charging Party.**	**Case No. 07-CA-228413**

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO/CLC ("CWA") INITIAL BRIEF ON STIPULATED RECORD

Communications Workers of America, AFL-CIO/CLC (hereinafter "Union" or "CWA") hereby submits its Initial Brief on the record stipulated to by the National Right to Work Foundation (on behalf of CP), counsel for the General Counsel and AT&T Services, Inc.

Date: September 8, 2020

Respectfully submitted,

s/ Matthew R. Harris

MATTHEW R. HARRIS
CWA District 4 Counsel
20525 Center Ridge Rd., Suite 700
Cleveland, Ohio 44116
T: 440-333-6363
F: 440-333-1491
E: mrharris@cwa-union.org

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I. FACTS[1]

The Communications Workers of America, AFL-CIO, CLC ("CWA" or "International") is an international labor organization. CWA District 4 is a regional subdivision of CWA, the International. CWA District 4 is part of the International. CWA Local 4009 ("Local" or "Local 4009"), also named in the Complaint, is an affiliated local labor organization. The Local is considered a separate legal entity from CWA. *Carbon Fuel Co. v. United Mine Workers of America*, 444 U.S. 212, 217 (1979); *Coronado Coal Company v. United Mine Workers*, 268 U.S. 295, 304 (1925).

CP is employed by AT&T Services, Inc., d/b/a AT&T Midwest (hereinafter "Company"). CWA and the Employer have had a bargaining relationship spanning several decades. CWA District 4 is the exclusive bargaining representative for several thousand of the Company's employees located throughout the states of Ohio, Michigan, Indiana, Illinois and Wisconsin. The collective bargaining agreement (hereinafter "CBA") between the parties was effective on or about April 15, 2018, and is set to expire on April 9, 2022. (Stip. EXHIBIT 9) The CBA was ratified by the Union's membership on or about August 5, 2019, and was dated retroactively. The predecessor CBA was effective April 12, 2015 through April 14, 2018. (Stip. EXHIBIT 2))

Throughout much of her employment, CP was a dues paying member in good-standing of the Union. During contract hiatus, in a letter dated June 14, 2018, CP notified Local 4009 and AT&T Payroll that she sought to revoke her membership in the Union as well as her dues checkoff authorization. (Stip. EXHIBIT 3) Specifically, CP noted, "Effective immediately, I hereby resign my membership in this (CWA Local 4009) and all affiliated unions. I hereby

[1] As of the date of this filing, CWA's Motion to Intervene and Motion to Remand and Reopen the Record is still pending before the Board. Nothing herein should be construed as the Union's consent to or agreement with the Stipulated Record entered into by the National Right to Work Foundation (on behalf of CP), the GC and Respondent. Rather, the Union submits its Initial Brief so that it may not be further prejudiced in this case.

revoke my dues deduction authorization form." (Stip. EXHIBIT 5) The Local did not actively seek to enforce the authorization. Rather, the Employer, acting on its own accord, made the decision to deny CP's revocation as untimely. (Stip. ¶11(b))

CP's dues checkoff authorization was executed on January 1, 2000, and provides in pertinent part:

> I hereby authorize AT&T to deduct from my salary or wages . . . an amount equal to regular monthly dues . . . This authorization shall remain in effect when I am employed by AT&T unless cancelled by me. Such cancellation must be individually sent to my AT&T Payroll Office and to the Union Local by Certified Mail postmarked within the fourteen (14) day period prior to the contract anniversary date (defined as each 365 period from the date of execution of this Agreement) or termination date of the current or subsequent Collective Bargaining Agreement, and shall be effective in the first payroll period in the following month. This authorization is voluntarily made in order to pay my fair share of the Union's cost of representing me for purpose [sic.] of collective bargaining, and this authorization is not conditioned on my present or future membership in the Union.

(Stip. EXHIBIT 3) The applicable provision of the CBA relevant to dues checkoff authorizations provides,

> 7.04 Any authorization of dues deduction shall not be subject to revocation except that an employee may revoke the authorization during the period beginning fourteen (14) days prior to each anniversary date, or during the period beginning fourteen (14) days prior to the termination date of this Collective Bargaining Agreement. Revocation of dues must be accomplished as follows:
>
> (A) Each employee who desires to revoke his or her dues deduction authorization must advise his or her Payroll Office by an individually signed letter. There shall be only one (1) letter per envelope.
>
> (B) The letter to the Payroll Office must be sent by Registered or Certified Mail.
>
> (C) Each such letter not postmarked within the specified time limits and in accordance with the above procedure will be considered void and the employee will be so advised by the Company.
>
> (D) The Company will send copies of the letters and associated envelopes to the District Headquarters of the Union on a daily basis.
>
> An employee's authorization shall be deemed automatically cancelled if the employee leaves the employ of the Company, is transferred or is promoted out of the Bargaining Unit.
>
> This Section will not affect any dues authorization form previously signed by the employee and submitted to the Company whose terms vary with the above. In such a case the terms of any

> employee's original dues authorization form will supersede those terms listed herein. (Stip. EXHIBITS 2, 9)

The current language tracks the most recent dues checkoff authorization used by the Company and CWA. Moreover, the CBA expressly provides that to the extent the language in the CBA differs from any checkoff authorization in existence the CBA will be superseded: "This Section will not affect any dues authorization form previously signed by the employee and submitted to the Company whose terms vary with the above. In such a case the terms of any employee's original dues authorization form will supersede those terms listed herein." (*Id*.)

Because CP did not comply with the terms for revoking her checkoff authorization, her request to cease deductions was denied by the Company. Counsel for CP, the GC and Employer now challenges the validity of the terms of the checkoff authorization CP voluntarily signed and the CBA entered into by the Company.

II. LAW AND ARGUMENT

A. It Is Well Settled That Revocation Requirements Contained in Dues Checkoff Agreements Are Lawful Insofar as The Terms Conform to 302(c)(4) and Established Board Authority.

The Parties argue that employees may revoke checkoff authorizations at will during contract hiatus irrespective of the terms of the checkoff authorization. This argument has been rejected on numerous occasions by the Board. Most recently, the Board addressed the issue in *Smith Food and Drug*, 366 NLRB No. 138, slip op. *1 (2018)[2]. The Board recited its standard for review as follows:

> Under Section 302(c)(4) of the Labor Management Relations Act, an employer may deduct employee dues and remit them to the union if "the employer has

[2] Counsel for CP has frequently cited *Stewart v. NLRB*, 851 F.3d 21 (D.C. Cir. 2017), in support of its position. *Stewart* did involve employees' untimely revocations of their checkoff authorizations during a contract hiatus. However, the court in *Stewart* merely remanded the matter to the Board for further consideration. *Id*. at 23. *Smith Food and Drug* represents the Board's decision on remand; it holds the most precedential value on this issue. Accordingly, it is cited here and addressed *infra*.

> received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner." Pursuant to Section 302(c)(4), a union can limit revocability of checkoff authorizations to window periods (1) at least once every year, for example, around the anniversary of their signing, and (2) prior to the expiration of the applicable collective-bargaining agreement. See *Frito-Lay*, supra at 138; *Atlanta Printing Specialties*, 215 NLRB 237, 237 (1974), enfd. 523 F.2d 783 (5th Cir. 1975). ***Because an authorization may automatically renew if it is not revoked during a window period, the expiration of a collective-bargaining agreement does not necessarily make it revocable at will.*** *Frito-Lay*, supra at 138. ***In addition, in the absence of a lawful union-security clause, an employee's resignation from union membership also does not revoke an authorization if the authorization agreement clearly establishes responsibility to pay dues regardless of union membership.*** See *Electrical Workers IBEW Local 2088 (Lockheed Space Operations)*, 302 NLRB 322, 328-329 (1991); *Steelworkers Local 4671 (National Oil Well)*, 302 NLRB 367, 368 (1991). (footnotes omitted) (emphasis added)[3]

As noted, the Board has clearly set forth that dues checkoff authorizations are not revocable at will merely because a CBA has expired. In reaching this conclusion, the Board reaffirmed its commitment to *Frito-Lay*, 243 NLRB 137, 137-38 (1979) and *Atlanta Printing Specialties and Paper Products Union Local 527, AFL-CIO (The Mead Corporation)*, 215 NLRB 237, 237 (1974), enfd. 523 F.2d 783 (5th Cir. 1975). As noted above, these cases collectively provide (1) that in order to be valid a checkoff authorization must meet Section 302(c)(4)'s guarantee that an employee has an annual opportunity and an opportunity at the termination of the collective-bargaining agreement to revoke his authorization (*Atlanta Printing*), and (2) that employees do not have an implied right to revoke an otherwise valid checkoff authorization at will merely because a CBA has expired (*Frito-Lay*).

Here, the authorization at issue provides:

[3] Respondent, in its Initial Brief raises for the first time the contention that *Lockheed* and *National Oil* were wrongly decided. These arguments were not raised prior hereto; do not appear to have been part of the GC's theory in this case and are not appropriate for the Board's review.

> I hereby authorize AT&T to deduct from my salary or wages . . . an amount equal to regular monthly dues . . . This authorization shall remain in effect when I am employed by AT&T unless cancelled by me. Such cancellation must be individually sent to my AT&T Payroll Office and to the Union Local by Certified Mail postmarked within the ***fourteen (14) day period prior to the contract anniversary date (defined as each 365 period from the date of execution of this Agreement) or termination date of the current or subsequent Collective Bargaining Agreement, and shall be effective in the first payroll period in the following month***. This authorization is voluntarily made in order to pay my fair share of the Union's cost of representing me for purpose [sic.] of collective bargaining, and ***this authorization is not conditioned on my present or future membership in the Union***.

Hence, the authorization provides an opportunity to revoke upon the anniversary of the execution of the authorization itself and an opportunity prior to the expiration of any CBA, thus meeting the requirements of *Frito Lay* and *Atlanta Printing*. Moreover, the authorization explicitly provides that it is not conditioned on the signator's membership in the Union. As such, the authorization is compliant with *Lockheed* and *National Oil Well*, *supra*, in that CP clearly authorized the deduction of dues to continue irrespective of her membership status[4].

In *Smith Food and Drug*, *supra*, (on remand from the D.C. Circuit) the Board examined whether the union violated the Act by refusing to honor employees' attempts to revoke their checkoff authorizations during a contract hiatus and outside window periods provided for in their authorizations. *Id*. at *1. The applicable authorization provided,

> This authorization and assignment is voluntarily made in consideration for the cost of representation and collective bargaining and is not contingent upon my present or future membership in the Union. This authorization and assignment

[4] Counsel for CP has also cited *Anheuser-Busch, Inc. v. Teamsters, Local 822*, 584 F.2d 41 (4th Cir. 1978) in support of its position that checkoff authorizations are revocable at will during contract hiatus. In *Anheuser-Busch*, the Fourth Circuit Court did find that 302(c)(4) "guaranteed employees the right to revoke their checkoff authorizations at will during the hiatus between collective bargaining agreements." However, the Fourth Circuit appears to be the only circuit to have explicitly made this finding. *Contra Associated Press v. NLRB*, 492 F.2d 662, 665-66 (D.C. Cir. 1974) (upholding Board's decision to uphold arbitrator's decision finding 302(c)(4) does not mandate at-will revocation of a checkoff authorization during hiatus); *see also Smith Food and Drug*, *supra*. Moreover, the Fourth Circuit Court did not have occasion to address checkoff authorizations that authorize the continuation of the checkoff arrangement irrespective membership status, as is the case here.

> shall be irrevocable for a period of one (1) year from the date of execution or until the termination date of the agreement between the Employer and Local 99, whichever occurs sooner, and from year to year thereafter, unless not less than thirty (30) days and not more than forty-five (45) days prior to the end of any subsequent yearly period I give the Employer and Union written notice of revocation bearing my signature thereto.

Id. The Board affirmed the Region's dismissal of the complaint holding,

> First, there is no evidence that the Union ever refused to honor timely revocation requests. As the Board noted in its prior decision, none of the Charging Parties attempted to revoke--or even inquired about revoking--during any conceivable window period. All revocations occurred during the hiatus period between contracts. Second, the Union did not misrepresent the terms of the authorization agreement in its 2009 letters. Its instruction that each employee needed to revoke during their next anniversary-of-signing window period was not incorrect under the circumstances. At that time, there was no collective-bargaining agreement in effect and thus no current preexpiration window period. Employees therefore suffered no detriment from the Union's response . . . we again dismiss the complaint

Id. at *6.

Here, as in *Smith Food and Drug*, CP attempted to revoke her checkoff authorization during a contract hiatus, outside the lawful revocation periods provided for in the authorization. CP had an opportunity during the 14 day period preceding the anniversary date of the execution of her authorization, and an opportunity prior to the expiration of the CBA to revoke her checkoff authorization. CP elected not to revoke her checkoff during either of these periods, which would have been honored by the Union. Instead, CP sought to revoke her authorization at will during a contract hiatus. The Company denied CP's request. At no time was the CWA involved in the Company's decision to deny CP's request. Nevertheless, CWA maintains that the Company's conduct is lawful. More specifically, *Frito Lay* and its progeny, including *Smith Food and Drug*, are controlling on this issue.

Further, the Division of Advice has examined and denied the validity of untimely revocations of similar CWA checkoff authorizations attempted by employees during a contract

hiatus. In *Southwestern Bell Telephone Company*, unreported, No. 17-CA-12624 et al., 1985 WL 54651, *1 (NLRB GC September 27, 1985). In that case, employees' checkoff authorization forms provided:

> I understand and agree that I may revoke this authorization by giving written notice to the Company by registered mail, only during the following period: for the duration of the 1977 Collective Bargaining Agreement, July 26, 1980 through August 9, 1980. I further understand that this authorization may be revoked in the manner stated above only during the periods beginning fourteen (14) days prior to the anniversary date of subsequent Collective-Bargaining Agreements between Southwestern Bell Telephone Company and the Union.

Id. Moreover, the CBA provided,

> Section 2. Any authorization of dues deduction shall not be subject to revocation except that an employee may revoke the authorization during the period beginning fourteen (14) days prior to each anniversary date of the current Collective Bargaining Agreements. These periods are: July 26, 1981 through August 8, 1981; July 25, 1982 through August 7, 1982; July 24, 1983 through August 6, 1983; all dates inclusive.

Id. Numerous employees attempted to revoke their authorizations during contract hiatus and outside the stated periods for revocation. *Id*. The employer honored them and the Union protested. *Id*. The matter was pursued to arbitration by the Union. As a result, an arbitrator ordered the Company to begin deducting dues for those employees who had untimely revoked. *Id*. at *2. On review, Advice approved of the arbitrator's decision noting,

> The arbitrator correctly interpreted and relied on the holding of *Frito-Lay*, supra, i.e., that Section 302(c)(4) sets out the minimum revocation rights necessary to a lawful checkoff provision or authorization, but does not establish a statutory period of at-will revocability at times when there is no contract in effect. The checkoff authorizations permit annual opportunities for revocation and they permit an opportunity for revocation immediately prior to the end of the contract. This comports with the requirements of *Frito-Lay*.

Id.

In sum, well-settled law provides that properly constructed checkoff authorizations are not revocable at will during a contract hiatus. The checkoff authorization at bar meets all

standards and thus is not revocable at will during a hiatus, but instead is revocable pursuant to the clear terms set forth in the authorization form itself. There is no need to revisit any of the issues cited in this case.[5]

B. Passage of a Right to Work Law Is Not a Change in Circumstance Impacting Checkoff Authorizations.

Counsel for CP has frequently alleged that the 2012 passage of Michigan's Right to Work (for less) Law is a changed circumstance, justifying the at-will revocation of CP's dues checkoff revocation. In essence, CP argues that she would not have signed the checkoff authorization were it not for the existence of a union security clause.

This argument was specifically addressed and foreclosed in an Advice Memorandum issued in NLRB case number 07-CB-137758 on February 19, 2015. There, it was concluded:

> The Region submitted this case for advice as to whether the Union violated Section 8(b)(1)(A) of the Act when it refused to honor the Charging Party's request to revoke her dues checkoff authorization, which she made outside the applicable revocation window but following enactment of Michigan's new right-to-work law. We conclude that the Union did not violate the Act because the Charging Party's request was outside her revocation window. Additionally, because the Charging Party chose to become a Union member when she executed her dues checkoff authorization, her obligation to abide by the terms of that authorization was not affected when Michigan's new right-to-work law subsequently eliminated any union-security obligation. Thus, the Region should dismiss the charge, absent withdrawal.

[5] Counsel for CP frequently cites several cases that are either altogether inapplicable, contain dicta or are not good law. For example, *Appalachian Shale Prods. Co*., 121 NLRB 1160 (1958), addresses the Board's contract bar doctrine. It is difficult for the Union to see any applicability whatsoever to the instant dispute. Additionally, CP cites, *Chemical Workers, Local 143*, 188 NLRB 705 (1971) and *Lowell Corrugated Container Corporation*, 177 NLRB 169 (1969). *Lowell* largely addressed the unlawful deduction of dues in benefit of a minority union as against a certified incumbent union. At best, *Lowell* contains dicta citing to *NLRB v. Penn Cork and Closures, Inc*., 376 F.2d 52, cert denied 389 U.S. 843, relating to employees rights under Section 9(e)(1) of the Act. Moreover, *Chemical Workers* addressed the validity of unspecified checkoff authorizations in light of simultaneous membership revocations: "This issue is essentially one concerning the validity of the authorizations in the face of membership resignations, and is a dispute involving contract interpretation rather than one involving and interpretation or application of the Act." *Id*. at 707. The quoted issue was more squarely addressed in *Lockheed* and *National Oil Well, supra*. Again, *Frito-Lay, Lockheed, National Oil Well* and their progeny directly address the issue at bar and are dispositive of this matter.

Moreover, CP has had numerous opportunities since the 2012 passage of Right to Work (for less) in Michigan to revoke her dues checkoff authorization. Now, six years later it strains credulity to argue that CP only maintained her checkoff authorization because of a union security clause. CP's argument is therefore without merit.

C. Certified Mail Requirements in Dues Checkoff Authorizations Consented to by an Employee Are a Legitimate and Reasonable Means of Ensuring an Employee's Intentions Are Honored.

The parties argue that a provision in a checkoff providing for revocation via certified mail is invalid. As recently as 2018, the Sixth Circuit has upheld certified-mail and window period requirements as contained in a dues checkoff authorization form. In *Ohlendorf v. United Food and Commercial Workers International Union, Local 876*, 883 F.3d 636, 639 (6th Cir. 2018), plaintiffs filed a class action against a union alleging it violated the LMRA by imposing conditions (i.e. a window period for withdrawal and a certified mail requirement) on their ability to revoke their checkoff authorizations, and violated its duty of fair representation in enforcing the conditions. The court rejected the claims, holding,

> The problem with the employees' claim is that they agreed to the window-period and certified-mail requirements when they signed the authorization form. Even if the requirements may seem burdensome, no one forced the employees to sign the checkoff authorizations. Having agreed to the two requirements, they are not in a position to say that the union acted arbitrarily in enforcing them . . . In holding the employees and itself to this contract, the union did not act in bad faith.

Id. at 644. In addition, as recently as 2012, the AGC at the time issued an Advice Decision addressing certified mail requirements at length. There, it was concluded:

> We conclude that the dues checkoff agreement clause requiring revocation by certified mail does not violate the Act because it is an internal union matter involving a voluntary agreement between the employee and the Union, and the requirement is not contrary to any overriding public policy . . by signing the authorization card, the employee enters into a voluntary agreement with the Union authorizing dues checkoff and providing for revocation by certified mail . . . [The] certified mail requirement serves a legitimate purpose because it avoids disputes by enabling both the employee and the union to verify the date a letter was sent

> and received . . . Further, the certified mail requirement does not extinguish employees' right to revoke checkoff, or place an excessive burden on their ability to revoke checkoff under Section 302(c)(4).

The former AGC went on to distinguish the resignation of the dues checkoff authorization from union resignations (as was addressed in *Auto Workers Local 148 (McDonnell Douglas)*, 296 NLRB 970, 970 (1989)), and *Beck* objections (as was addressed in *California Saw*, 320 NLRB 224, 236 (1995), noting, "Both involve the imposition of certified mail requirements throughout unilaterally promulgated union rules, rather than through a voluntary agreement between the employee and the union. Second, both involve situations in which the union is not legally permitted to enforce a window period."[6] As such, a certified mail requirement contained in a checkoff authorization to which an employee voluntarily assents is perfectly valid.

D. The CBA Contains a "Savings Clause" Ensuring That Its Terms Do Not Conflict with Any Employee's Dues Checkoff Consent Form.

Counsel for CP will presumably argue that the CBA contains provisions which contravene the terms of her checkoff authorization. As noted, the CBA provides:

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[6] Counsel for CP has frequently cited *Local 58, IBEW (Paramount Industries)*, 888 F.3d 1313 (D.C. Cir 2018) in support of her position that a certified mail revocation requirement as contained in a checkoff authorization is invalid . This case is inapposite because it addressed a union's unilateral attempt to impose a new requirement that a union member wishing to resign membership or opt out of dues deduction appear in person at the local's hall with picture identification and a written request to withdraw. *Id.* at 1315. These matters are not at issue here and the case at bar does not involve the unilateral imposition of any preconditions to checkoff revocation. In fact, the union has not even sought to enforce the certified mail requirement in this matter. Hence, CP's only challenge is a facial challenge to the checkoff authorization, which fails in accordance with the precedent cited above.

Similarly, counsel for CP has also cited *Felter v. Southern Pacific Co*., 359 U.S. 326 (1959) and *Newport News Shipbuilding & Dry Dock Co*., 253 NLRB 721 (1980). In both of these cases the union and employer agreed, vis-à-vis the use of a collective bargaining agreement, to the use of a particularized form for employees to effectuate the revocation of a checkoff authorization. These requirements went beyond the four corners of the checkoff authorizations at issue and were found to be invalid. Again, the unilateral imposition of such preconditions outside the checkoff authorization is not at issue here. To the extent the CBA provides for anything other than what's specified in any particular checkoff authorization it is superseded according to its terms. For further discussion, *see supra*.

> 7.04 Any authorization of dues deduction shall not be subject to revocation except that an employee may revoke the authorization during the period beginning fourteen (14) days prior to each anniversary date, or during the period beginning fourteen (14) days prior to the termination date of this Collective Bargaining Agreement. Revocation of dues must be accomplished as follows:
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> (A) Each employee who desires to revoke his or her dues deduction authorization must advise his or her Payroll Office by an individually signed letter. There shall be only one (1) letter per envelope.
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> (B) The letter to the Payroll Office must be sent by Registered or Certified Mail.
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> (C) Each such letter not postmarked within the specified time limits and in accordance with the above procedure will be considered void and the employee will be so advised by the Company.
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> (D) The Company will send copies of the letters and associated envelopes to the District Headquarters of the Union on a daily basis.
>
> An employee's authorization shall be deemed automatically cancelled if the employee leaves the employ of the Company, is transferred or is promoted out of the Bargaining Unit.
>
> This Section will not affect any dues authorization form previously signed by the employee and submitted to the Company whose terms vary with the above. In such a case the terms of any employee's original dues authorization form will supersede those terms listed herein.

CP either overlooks or purposefully avoids the last Section, which provides, "This Section will not affect any dues authorization form previously signed by the employee and submitted to the Company whose terms vary with the above. In such a case the terms of any employee's original dues authorization form will supersede those terms listed herein." Neither the Local nor the International has ever sought to vary from the terms of CP's checkoff authorization.

III. CONCLUSION

For the above reasons, this case should be dismissed in its entirety as it raises no novel issues warranting the Board's review.

Respectfully submitted,

s/ *Matthew R. Harris*

MATTHEW R. HARRIS
CWA District 4 Counsel
20525 Center Ridge Rd., Suite 700
Cleveland, Ohio 44116
T: 440-333-6363
F: 440-333-1491
E: mrharris@cwa-union.org

CERTIFICATE OF SERVICE

Pursuant to the Board's Rules and Regulations the undersigned hereby certifies that a copy of the foregoing was filed electronically with the Board on September 8, 2020. A copy of the same was submitted to the following individuals via email the same day.

Stephen J. Sferra, Esq.
Jeffrey Seidle, Esq.
LITTLER MENDELSON, P.C.
1100 Superior Avenue, 20th Floor
Cleveland, OH 44114
Telephone: 216-696-7600
Email: sferra@littler.com
jseidle@littler.com

Larry A. Smith
Rana Roumayah
Counsels for the General Counsel
National Labor Relations Board – Region 7
477 Michigan Avenue, Room 05-200
Detroit, MI 48226
Telephone: (313) 335-8081
Email: larry.smith@nlrb.gov
Rana.Roumayah@nlrb.gov

Alyssa K. Hazelwood, Esq.
Glenn Taubman, Esq.
National Right to Work Legal Defense Foundation, Inc.
8001 Braddock Rd., Suite 600
Springfield, VA 22160
P: (703) 321-8510
Email: akh@nrtw.org
gmt@nrtw.org

Respectfully submitted,

s/ *Matthew R. Harris*

MATTHEW R. HARRIS
CWA District 4 Counsel
20525 Center Ridge Rd., Suite 700
Cleveland, Ohio 44116
T: 440-333-6363
F: 440-333-1491
E: mrharris@cwa-union.org